

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

TACITA FAIR,)	
)	
Plaintiff,)	
)	
v.)	Case No.: 4:17-CV-02391
)	
COMMUNICATIONS UNLIMITED,)	
INC., C.U. EMPLOYMENT, INC.,)	
COMMUNICATIONS UNLIMITED)	
CONTRACTING SERVICES, INC.,)	
COMMUNICATIONS UNLIMITED)	
ALABAMA, INC., and MARTIN C.)	
ROCHA,)	
)	
Defendant.)	

**DEFENDANT’S MOTION TO COMPEL ARBITRATION AND
DISMISS OR STAY ARBITRATION PLAINTIFFS’ CLAIMS**

COME NOW Defendants C.U. Employment, Inc., Communications Unlimited Contracting Services, Inc. (collectively referred to as “CU Defendants”), and Martin Rocha (collectively “Defendants”), and pursuant to the Federal Arbitration Act, 9 U.S.C. §§ 3-4, move this Court for an Order compelling arbitration of claims raised by Kevin Mallory, Iaroslav Bashtanar, Anthony Ellett, Chris Royster, Joshua Jarvis, Rasheeb Burns, and Abraham Garcia (“Arbitration Plaintiffs”), and dismissing the Arbitration Plaintiffs’ claims, or alternatively, staying their claims during the pendency of the arbitration proceedings. For their Motion to Compel Arbitration and Dismiss or Stay Arbitration Plaintiffs’ Claims, Defendants state:

1. Arbitration Plaintiffs opted in to this collective action to recover overtime compensation under the Fair Labor Standards Act (“FLSA”)¹, alleging that they were misclassified as independent contractors, when, in fact, they were employees of CU Defendants.

2. Each of the Arbitration Plaintiffs entered into an arbitration agreement with Defendants that covers the claims raised by Arbitration Plaintiffs in this action.

3. Arbitration Plaintiffs agreed in the arbitration agreements to participate in arbitration individually and agreed to waive the collective action. That waiver is valid and enforceable.

4. Arbitration has not been waived by substantial litigation by the parties.

5. Therefore, each Arbitration Plaintiff should be required to individually arbitrate their claims against Defendants as they agreed to do.

6. The Federal Arbitration Act (“FAA”) requires the Court to compel arbitration and dismiss or stay the Arbitration Plaintiffs’ claims. Section 3 of the FAA requires a court to stay the judicial proceeding pending arbitration. 9 U.S.C.A. § 3. Nonetheless, a district court may dismiss an action rather than stay where it is clear the entire controversy between the parties will be resolved by arbitration. *See e.g., Green v. SuperShuttle Int’l, Inc.*, 653 F.3d 766, 769 (8th Cir. 2011); *Choice Hotels Int’l, Inc. v. BSR Tropicana Resort, Inc.*, 252 F.3d 707, 709 (4th Cir. 2001).

7. Defendants incorporate by reference their Memorandum of Law in Support of their Motion to Compel Arbitration and Stay Collective Action as though it is fully stated herein.

¹ Initially, Plaintiff Tacita Fair, on behalf of herself and a putative class, filed this lawsuit claiming overtime compensation under both the FLSA and the Missouri Minimum Wage Law (“MMWL”), but she has informed the Court that those claims will not be pursued.

WHEREFORE, Defendants C.U. Employment, Inc., and Communications Unlimited Contracting Services, Inc., and Martin Rocha respectfully request the Court enter an Order compelling Arbitration Plaintiffs to participate in individual arbitration; to dismiss the Arbitration Plaintiffs' claims, or alternatively, stay their claims pending arbitration; and grant any other relief that this Court deems just and appropriate.

BROWN & JAMES, P.C.

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**Attorneys for Defendants C.U.
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Martin Rocha**

CERTIFICATE OF SERVICE

I hereby certify that on January 16, 2020, the foregoing was filed electronically with the Clerk of Court to be served by operation of the Court's electronic filing system upon the following:

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